

1 Cynthia L. Alexander, Esq.  
2 Nevada Bar No. 6718  
3 Taylor Anello, Esq.  
4 Nevada Bar No. 12881  
5 Snell & Wilmer L.L.P.  
6 3883 Howard Hughes Parkway, Suite 1100  
7 Las Vegas, NV 89169  
8 Telephone: (702) 784-5200  
9 Facsimile: (702) 784-5252  
10 Email: calexander@swlaw.com  
11 tanello@swlaw.com

12 *Attorneys for SunTrust Mortgage, Inc.*

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 LES COHEN,

16 Plaintiff,

17 v.

18 GLYNIS TURRENTINE; and SUNTRUST  
19 MORTGAGE, INC.; and U.S. BANK  
NATIONAL ASSOCIATION AS  
TRUSTEE FOR JP ALT 2006-A2; and  
MONTEREY AT THE LAS VEGAS  
COUNTRY CLUB; and LAS VEGAS  
INTERNATIONAL COUNTRY CLUB  
ESTATES; DOES 1 through 10, inclusive  
ROE CORPORATION, 1 through 10,  
inclusive,

20 Defendants.

21 CASE NO. 2:15-CV-00412-GMN-GWF

22 **DEFENDANT SUNTRUST  
MORTGAGE'S REPLY IN SUPPORT  
OF RESPONSE TO ORDER TO SHOW  
CAUSE AS TO WHY THE COURT  
SHOULD NOT REMAND THIS ACTION  
TO CLARK COUNTY DISTRICT  
COURT FOR FAILURE TO SATISFY  
THE DIVERSITY JURISDICTION  
REQUIREMENTS SET FORTH IN 28  
U.S.C. §1332**

23 Defendant SunTrust Mortgage, Inc. ("SunTrust"), by and through its counsel of record,  
24 the law firm of Snell & Wilmer L.L.P., hereby responds to the Court's Order to Show.

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **I. INTRODUCTION**

27 Plaintiff fraudulently joined Turrentine and the HOA Defendants solely for the purposes of  
defeating diversity jurisdiction, and thus their citizenship should be disregarded for purposes of  
determining diversity. Co-defendants, Glynis Turrentine ("Turrentine"), Monterey at the Las

1 Vegas Country Club and Las Vegas International Country Club Estates (Monterey at the Las  
 2 Vegas Country Club and Las Vegas International Country Club Estates are collectively referred  
 3 to as the “HOA Defendants”) are Nevada citizens, but fraudulently joined. The language in the  
 4 Complaint, in addition to the recorded documents, establishes that Turrentine and the HOA  
 5 Defendants are not asserting an adverse interest in the Property. Moreover, the Complaint fails to  
 6 state a cause of action against Turrentine or the HOA Defendants.

7 **II. LEGAL STANDARD**

8 This Court has original jurisdiction of the Action under 28 U.S.C. § 1332, as complete  
 9 diversity exists between the Plaintiff and the properly named Defendants. As such, a Defendant  
 10 may remove the Action to the District Court of the United States for the district embracing the  
 11 Court where the Action is pending. *See* 28 U.S.C. § 1441.

12 *1. Legal standard to disregard citizenship for purposes of diversity.*

13 A fraudulently joined defendant will not defeat removal on diversity grounds. *Silon v.*  
*American Home Assurance Company*, 2009 WL 1090700, \* 4 (D. Nev. 2009) (citing *Ritchey v.*  
*Upjohn Drug Co.*, 139 F. 3d 1313, 1318 (9th Cir. 1998) (“fraudulently joined defendants will not  
 16 defeat removal on diversity grounds.”) “[A] defendant must have the opportunity to show that  
 17 the individuals joined in the action cannot be liable on any theory.” *Ritchey*, 139 F. 3d at 1318.  
 18 “If the plaintiff fails to state a cause of action against a resident defendant, and the failure is  
 19 obvious according to the settled rules of the state, the joinder of the resident defendant is  
 20 fraudulent.” *McCabe v. General Foods Corp.*, 811 F. 2d 1336, 1339 (9th Cir. 1987.)

21 “Claims for fraudulent joinder are reviewed on a standard similar to or more lenient than  
 22 the standard for motions to dismiss.” *Knutson v. Allis-Chalmers Corp.*, 358 F. Supp. 2d 983, 995  
 23 (D. Nev. 2005) (citing *Sessions v. Chrysler Corp.*, 517 F.2d 759, 761 (9th Cir.1975) (noting that  
 24 to the extent appellant's case could withstand a motion to dismiss, the joinder of claims against  
 25 Defendants was not fraudulent); *Bertrand v. Aventis Pasteur Labs., Inc.*, 226 F.Supp.2d 1206,  
 26 1213 (D.Ariz.2002) (noting that the standard for fraudulent joinders is more lenient than that  
 27 employed in motion to dismiss inquiries). Here, Plaintiff is seeking to quiet title and enjoin U.S.  
 28 Bank and SunTrust from foreclosing on the Property. As Turrentine and the HOA Defendants no

1 longer have any interest in the Property and, more importantly, as they are not asserting an  
 2 interest in the Property, there is no reason for them to respond to the Complaint or participate in  
 3 this lawsuit. As established by Plaintiff's Affidavit of Due Diligence, Plaintiff cannot locate  
 4 Turrentine, let alone establish that she is now claiming some sort of adverse claim on the  
 5 Property. Both the HOA Defendants and Turrentine's deadline to respond to the Complaint has  
 6 long passed, yet Plaintiff has not filed a default against either.

7       *2. The plain language of the Complaint establishes that Turrentine and the HOA were  
 8 fraudulently joined.*

9       The language of the Complaint clearly shows that Plaintiff is not asserting any viable  
 10 claims against Turrentine or the HOA Defendants. This Court has recently addressed fraudulent  
 11 joinder in the context of an identical HOA "super-priority" lien complaint, finding that the  
 12 inclusion of a defendant in the same position as Turrentine (i.e., the original  
 13 homeowner/borrower) constituted fraudulent joinder and therefore upheld removal and denied  
 14 remand. *Weeping Hollow Ave. Trust v. Spencer*, 2:13-cv-544 JCM-VCF, 2013 WL 3270556, at  
 15 \*2-3 (D. Nev. June 26, 2013) (unpublished.) In *Weeping Hollow*, based on the language in the  
 16 complaint, the Court held that the plaintiff's foreclosure "pursuant to NRS 116 extinguished [the  
 17 original homeowner/borrower's] rights or interest in the property" and thus the original  
 18 homeowner/borrower "is a fraudulently joined defendant and is dismissed from the action." *Id.*

19       Likewise, in the Complaint at issue, Plaintiff alleged that "the interest of each of the  
 20 defendants, if any, has been extinguished by reason of the foreclosure sale, which was properly  
 21 conducted with adequate notice given to all persons and entities claiming a recorded interest in  
 22 the subject property and resulting from a delinquency in assessments due from the former owner,  
 23 to Monterey at the Las Vegas Country Club, pursuant to NRS Chapter 116 and *SFR Invs. Pool 1,*  
 24 *LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014)." See Amended Complaint at ¶¶ 12 & 17,  
 25 respectively. Additionally, there is absolutely no specific mention of Glynis Turrentine in the  
 26 Complaint, apart from the statements regarding jurisdiction, let alone any viable causes of action  
 27 pled against her. Plaintiff's Response does not establish otherwise.

1           It is also clear from a plain reading of the Complaint that Plaintiff is purely seeking to  
 2 avoid the holders of the First and Second Deed of Trust (U.S. Bank and SunTrust) from  
 3 foreclosing on the Property. The First Claim For Relief is seeking declaratory relief and quiet  
 4 title finding that, “any attempt to transfer of title to the Property through a non-judicial  
 5 foreclosure sale pursuant to either the First Deed of Trust or the Second Deed of Trust would be  
 6 invalid.” *See* Complaint ¶ 23. The Second Claim For Relief is only asserted against U.S. Bank  
 7 and SunTrust. Finally, the Third Claim for Relief for slander to title alleges that “defendants have  
 8 made adverse claims that conflict with Plaintiff’s claim to title and constitute a cloud upon title.”  
 9 *See* Complaint at ¶ 31.

10          Plaintiff claims that it “is in settlement negotiations with the HOA Defendants to settle  
 11 ‘claims’ and that he has agreed that no responsive pleading would be required until the action had  
 12 been remanded or a final order as to the instant order to show cause was issued.” Plaintiff  
 13 provides no explanation as to what “claims” he is attempting to settle with the HOA Defendants  
 14 and is completely silent as to Turrentine. It seems contrary to the purpose of the Complaint to be  
 15 negotiating with Defendants you contend have no interest in the Property. Further, there is no  
 16 evidence that Turrentine or the HOA have made any adverse claims that conflict with Plaintiff’s  
 17 claim to title. In fact, the evidence shows otherwise, as the HOA released both liens against the  
 18 Property following the foreclosure sale. Simply asserting a cause of action as to “all Defendants”  
 19 does not mean that Plaintiff has asserted a viable cause of action against Turrentine and the HOA  
 20 Defendants. Unlike Turrentine, SunTrust has a validly recorded Deed of Trust on the Property,  
 21 which was not released, as that of the HOA. However, in attempts to defeat complete diversity  
 22 Plaintiff added the former owner and the HOA as parties.

23           3. *The claims asserted against Turrentine fail as a matter of law.*

24          In *Chandler v. NDeX W., LLC*, the Ninth Circuit affirmed the district court’s decision that  
 25 defendants were fraudulently joined because Plaintiff “failed to allege the necessary elements of  
 26 any of the five state law causes of action against them.” 571 F. App’x 606, 608 (9th Cir. 2014)  
 27 (*citing* *Hay v. Hay*, 100 Nev. 196, 678 P.2d 672, 674 (1984) (internal citations omitted)). While  
 28

1 Plaintiff has identified Turrentine as a party to this action, Plaintiff has not alleged any conduct by  
 2 Turrentine in support of its claims for quiet title and declaratory relief.

3 To succeed on its quiet title claim pursuant to NRS 40.010, Plaintiff must allege that  
 4 Turrentine has asserted an adverse ownership interest in the Property. However, Plaintiff's  
 5 Complaint does not allege that Turrentine has asserted any claim to the Property. To the contrary,  
 6 Plaintiff's sole assertion is that Turrentine "was the owner(s) of the Property. . . .", conceding that  
 7 Plaintiff is currently not asserting an interest in the Property... (Compl. ¶ 2)(emphasis added.)  
 8 Additionally, Plaintiff makes no specific mention of Turrentine following the jurisdictional  
 9 statements. It is undeniable that a borrower's property interest is extinguished by a foreclosure  
 10 sale triggered by her own default. Significantly, since the time of the HOA foreclosure sale  
 11 Turrentine: 1) is not alleged to have asserted any ownership interest or claim of title in the  
 12 Property; 2) presumably no longer resides in the Property; 3) has done nothing to indicate an  
 13 intent to assert an ownership interest in the Property; and 4) has recorded no encumbrances  
 14 against the Property. As such, Plaintiff's claims against Turrentine fails as a matter of law  
 15 because Turrentine cannot and has not asserted any interest in the Property, and the Plaintiff has  
 16 not alleged any such interest. Thus, Turrentine should not be considered for purposes of  
 17 diversity.

18       4. *The claims asserted against the HOA Defendants fail as a matter of law.*

19       The Complaint alleges that the HOA Defendants "claim[] a lien upon the property for  
 20 assessments in an amount of excess of that to which they may be entitled pursuant to NRS  
 21 116.3116" (Compl. ¶ 15); however, the both of the HOA Defendants filed releases of their  
 22 recorded liens after the foreclosure sale. *See* RJN Exhibits 12 & 13. The HOA Defendants  
 23 directed the foreclosure sale, and after receipt of the proceeds therefrom, released their liens in  
 24 full against the Property well before the Complaint was filed. As such, there is no legal basis upon  
 25 which the HOA could assert any adverse claim to the property in question. As such, Plaintiff's  
 26 claims against the HOA Defendants fail as a matter of law because the HOA Defendants cannot  
 27 and have not asserted any interest in the Property. Thus, the HOA Defendants should not be  
 28 considered for purposes of diversity.

1       **III. CONCLUSION**

2              Based on the foregoing, the pleadings, facts and relevant law establish that the citizenship  
3 of Turrentine and the HOA Defendants should be disregarded for determining whether complete  
4 diversity exists. As U.S. Bank and SunTrust are the only properly named Defendants, complete  
5 diversity exists and this matter should not be remanded back to Clark County District Court.  
6 Additionally, as the amount in controversy is satisfied and the Petition for Removal was timely,  
7 this Court has subject matter jurisdiction over this action.

8  
9              Dated: April 15, 2015

10              SNELL & WILMER L.L.P.



11              Cynthia L. Alexander, Esq.  
12              Nevada Bar No. 6718  
13              Taylor Anello Esq.  
14              Nevada Bar No. 12881  
15              3883 Howard Hughes Parkway, Suite 1100  
16              Las Vegas, NV 89169  
17              Telephone: (702) 784-5200  
18              Facsimile: (702) 784-5252  
19              Email: [calexander@swlaw.com](mailto:calexander@swlaw.com)  
20              [tanello@swlaw.com](mailto:tanello@swlaw.com)

21              *Attorneys for SunTrust Mortgage, Inc.*

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **REPLY IN SUPPORT OF RESPONSE TO ORDER TO SHOW CAUSE REGARDING REMOVAL** by the following method and addressed to the following:

X via CM/ECF electronic service

Michael N. Beede, Esq.  
Nevada State Bar No. 13068  
The Law Office of Mike Beede, PLLC  
2300 W. Sahara Ave., Suite 420  
Las Vegas, NV 89102  
T: 702.473.8406  
F: 702.832.0248  
[mike@LegalLV.com](mailto:mike@LegalLV.com)  
Attorney for Les Cohen

DATED this 15<sup>th</sup> day of April, 2015.

An employee of Snell & Wilmer L.L.P.

21388871